

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2020 JUL -9 PM 3:41

JUAN RODRIGUEZ, JR.,

Plaintiff,

v.

MICHAEL TOUCHETTE et al.,

Defendants.

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Case No. 5:19-cv-143

**ORDER**  
**(Docs. 13, 16, 17)**

The Magistrate Judge issued a Report and Recommendation (R&R) on May 11, 2020. (Doc. 17.) Plaintiff, who represents himself, has filed no objection to the R&R. After careful review of the file and the Magistrate Judge's thorough Report and Recommendation, and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. *See* 28 U.S.C. § 636(b)(1).

As noted in the R&R, Plaintiff has filed this suit under 42 U.S.C. § 1983 against the Commissioner of the Vermont Department of Corrections (DOC)<sup>1</sup> and Joel Machado, a Corrections Service Specialist at Vermont's Northern State Correctional Facility (NSCF). Plaintiff claims that Defendants have held him "under VTDOC supervision longer than the original sentencing court in the original jurisdiction mandated" by requiring him "to submit to the Vermont Sex Offender Registry" for a previous, unrelated offense in Connecticut. (Doc. 5 at 2-3.)

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<sup>1</sup> Michael Touchette was the Commissioner of the Vermont Department of Corrections when Plaintiff filed this suit in August 2019. Touchette has since stepped down from that post, and James Baker is currently serving as Interim Commissioner. The Commissioner is automatically substituted for Touchette in his official capacity under Fed. R. Civ. P. 25(d).

Defendants' Motion to Dismiss (Doc. 16) is GRANTED for the reasons stated in the R&R. Rodriguez's claim for injunctive relief is moot because he previously filed suit in the Vermont Superior Court challenging registration with the Vermont Sex Offender Registry—*Rodriguez v. Touchette*, No. 192-8-19 Oscv—and he voluntarily dismissed that suit after the DOC agreed that he is not required to register. (*See* Doc. 16-2.) Dismissal is also warranted because Rodriguez failed to exhaust administrative remedies. Rodriguez's § 1983 official-capacity claims for money damages cannot proceed because the defendants in their official capacities are not "persons" under § 1983 and because of Eleventh Amendment immunity. And Rodriguez's claims against Touchette in his individual capacity must be dismissed for lack of personal involvement.

Rodriguez's Motion to Amend (Doc. 13) is DENIED for the reasons stated in the R&R. He has already been granted leave to amend his complaint once, and better pleading cannot cure the bars arising from mootness, failure to exhaust, and sovereign immunity.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 9<sup>th</sup> day of July, 2020.



Geoffrey W. Crawford, Chief Judge  
United States District Court